

**立法會**  
**Legislative Council**

LC Paper No. CB(1)1918/00-01  
(These minutes have been seen  
by the Administration and  
cleared with the Chairman)

Ref: CB1/BC/8/00/2

**Bills Committee on  
Dutiable Commodities (Amendment) Bill 2001**

**Meeting on  
Friday, 8 June 2001, at 8:30 am  
in Conference Room B of the Legislative Council Building**

- Members present** : Hon Kenneth TING Woo-shou, JP (Chairman)  
Hon James TIEN Pei-chun, JP  
Hon HUI Cheung-ching  
Hon SIN Chung-kai
- Members absent** : Hon Eric LI Ka-cheung, JP  
Hon CHAN Kam-lam
- Public officers attending** : Commerce and Industry Bureau  
  
Mr Philip CHAN  
Principal Assistant Secretary for Commerce and Industry  
  
Miss Katherine JUE  
Assistant Secretary for Commerce and Industry  
  
Department of Justice  
  
Mr Jonothan ABBOTT  
Senior Assistant Law Draftsman  
  
Miss Frances HUI  
Senior Government Counsel  
  
Customs & Excise Department  
  
Mr Simon WONG  
Assistant Commissioner

Mr Ferdinand LEUNG  
Senior Superintendent

**Clerk in attendance** : Mr Andy LAU  
Chief Assistant Secretary (1)2

**Staff in attendance** : Miss Anita HO  
Assistant Legal Adviser 2

Ms Alice AU  
Senior Assistant Secretary (1)5

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**I Confirmation of minutes**

(LC Paper No. CB(1) 1432/00-01 - Minutes of meeting held on  
15 March 2001)

The minutes of the meeting on 15 March 2001 were confirmed.

Mandating the use of electronic data interchange for Government  
trade-related documents

2. Referring to paragraph 5 of the minutes of meeting on 15 March 2001, the Chairman sought clarification from the Administration as to whether the mandatory use of electronic data interchange (EDI) services for production notification and certificate of origin was in full compliance with the current law, given that express provisions had been provided in the relevant legislation that these two types of trade-related documents could be submitted in either paper or electronic form.

3. The Principal Assistant Secretary for Commerce and Industry (PAS/CI) advised that according to the legal advice sought, the Administration could require the submission of trade-related documents to be made in the form of EDI if sufficient prior notice had been given to applicants on the change of mode of application. In effect, full migration to EDI services had been implemented in each case, and traders had already accepted the change in the mode of submission. The Administration was of the view that legal omission of this kind, even if it existed, would not have significant implications on the industry. Members accepted that with the use of EDI, traders would prefer to submit their applications/requests at their own premises, saving the time and resources for trips to the Trade and Industry Department for the submission and re-submission of applications/requests. They however urged the Administration to look into the legal points raised and introduce suitable amendments, if necessary.

4. Members continued to deliberate on the general issues of the Bill before proceeding to examine the Bill clause by clause.

Fee-related issues

5. Members noted that clause 4 of the Bill sought to amend the regulation-making power under the Dutiable Commodities Ordinance (Cap. 109) (the Ordinance). This amendment would allow regulations to be made in relation to the use of recognized electronic services for giving information in respect of goods to which the Ordinance applied. Members also noted that the Administration intended to stipulate that a dutiable commodities (DCs) warehouse operator must immediately send to the Commissioner of Customs & Excise (the Commissioner) via a recognized electronic service information regarding any movement of DCs in and out of the warehouse. This would enable the Customs and Excise Department to strengthen control of the DC stock in the warehouse.

6. Mr James TIEN was concerned whether clause 4 would provide a legal basis for Government or Tradelink, a private entity, to impose a service fee for the use of EDI for giving information in respect of any movement of DCs in and out of the warehouse, bearing in mind such service was at present not subject to any charge.

7. PAS/CI clarified that clause 4 was not intended for any charging purpose. It merely sought to empower the Commissioner to specify any form or requirement for giving information under the Ordinance in respect of any goods to which the Ordinance applied. In practice, Tradelink would charge a single fee for processing of application for dutiable commodities permit (DCP), on the basis of each application. The administration costs incurred in connection with the reporting of movement of DCs in and out of the warehouse by means of EDI to the Commissioner would be included in the application fee for DCP, and hence, a separate fee would not be imposed on users.

8. Notwithstanding the clarification by the Administration, Mr James TIEN was worried that it would be difficult to restrain a private company from imposing a service fee in this regard as there was no express provision in the law binding the company from not doing so. PAS/CI advised that under the agreement between the Government and Tradelink, Tradelink's fees for EDI services for Government-related documents had to be approved by the Government. It had been Government's standing arrangement to consult the relevant Panel before finalizing the Tradelink's fees. Although Tradelink could set its fees to secure an internal rate of return on its investment not exceeding 18% over the franchise period, the internal rate of return of Tradelink over the past few years had been around 9% to 10% only. At the request of the Bills Committee, PAS/CI undertook to state clearly during the Second Reading debate on the Bill the pricing mechanism of DCPs, including an undertaking not to impose a separate charge on the use of EDI services in respect of the reporting of any movement of DCs in and out of the warehouse.

9. On the proposed fees for using EDI services relating to DCPs, PAS/CI advised that the fees were not collected by Government but Tradelink, which served as a Government agent to provide front-end services for the processing by EDI of the official trade-related documents.

### Consultation with the industry

10. As regards the consultation on the proposed fees for using EDI services relating to DCPs, PAS/CI advised that major users of DCPs had been consulted through the DCP Customer Liaison Group formed under Customs and Excise Department. PAS/CI said Tradelink originally proposed a fee of \$60 per DCP application. However, during Tradelink's consultation with the industry, users found the proposed fees, particularly for processing applications for Ship's Stores Permits (SSPs) too high. Some also considered it unfair to apply a flat rate to all users regardless of the volume of transactions. Taking into account the views of the industry, Tradelink had reduced and restructured the fees. PAS/CI further said that at present, Tradelink intended to charge a fee of \$44 per DCP application and \$25 per SSP application. Applicants would be entitled to a discounted fee at \$40 for 2001 if they applied for more than 1 000 DCPs annually. The Administration would consult the Panel on Commerce and Industry on the proposed fees for processing DCPs by EDI at the meeting on 11 June 2001.

11. On the pricing of EDI services upon liberalization of the market, PAS/CI said that the Administration would set a ceiling on the price that each new electronic service provider might charge for each service, taking into account the existing fees by Tradelink. The Administration would then let market competition decide the prices.

## **II Committee Stage amendments**

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| (LC Paper Nos. CB(1) 828/00-01 and<br>CB(1) 1431/00-01(01)    | - Letters dated 8 March 2001 and 23 May 2001 from Assistant Legal Adviser 2 to the Secretary for Commerce and Industry;                            |
| LC Paper Nos. CB(1) 850/00-01(01) and<br>CB(1) 1431/00-01(02) | - Letters dated 14 March 2001 and 4 June 2001 from the Secretary for Commerce and Industry in response to the views of the Legal Service Division; |
| LC Paper No. CB(1)1495/00-01(01)                              | - A paper titled "Dutiable Commodities (Amendment) Bill 2001 Committee Stage amendments"; and  |
| LC Paper No. CB(1)1495/00-01(02)                              | - An amended version of the Dutiable Commodities (Amendment) Bill 2001 incorporating the Committee Stage amendments)                               |

### Proposed Committee Stage amendments (CSAs) by the Administration

12. At the Bills Committee meeting held on 15 March 2001, members requested the Administration to review the drafting aspect of the Bill so as to bring

the drafting of the English and Chinese texts in line with each other to eliminate any ambiguity in the interpretation of the provisions in the Bill. PAS/CI advised that the Administration had exchanged correspondence with Assistant Legal Adviser 2 (ALA2) in May 2001 on the issue. He also remarked that the Administration had taken longer time to prepare the CSAs owing to the preoccupation with the Copyright (Suspension of Amendment) Bill 2001. As such, the Administration could not revert to the Bills Committee earlier.

13. PAS/CI said that the proposed CSAs as set out in LC Paper No. CB(1) 1495/00-01(01) were technical in nature and covered three major areas:

- (a) alignments of English and Chinese texts - amendments to clauses 2, 3, 8, 9(3), 11 and 12;
- (b) improvement to drafting - amendments to clauses 4 and 9(3); and
- (c) minor amendments to clause 9(3) so as to provide the Commissioner with more flexibility regarding the period within which the import and export statements must be furnished.

#### Clause-by-clause examination

14. With the aid of a marked-up copy incorporating the proposed CSAs to be moved by the Administration and prepared by the Legal Service Division, members went through the Bill clause by clause. The summary of the discussions was set out below.

#### *Clause 2 - Interpretation*

15. Mr SIN Chung kai asked whether the term "security device" in Clause 2 was wide enough to cover items such as a diskette provided by Tradelink containing the person's private key in encrypted software which was used to generate a digital signature. In reply, the Administration undertook to examine further and provide a written response after the meeting.

*(Post meeting note : The requested information was provided vide LC Paper No. CB(1) 1495/00-01(01).)*

#### *Clause 3 - Part added*

##### *New section 3A - Specified electronic service providers and eligible agents*

16. Referring to the selection criteria and regulatory framework for new electronic service providers, Mr SIN Chung-kai was of the view that the Administration should make reference to the voluntary system of recognition introduced under the Electronic Transactions Ordinance (Cap. 553) (ETO) whereby Certification Authorities (CAs) were free to apply for recognition from Government. Under the voluntary regime, the Director of Information Technology Services (DITS) would be the authority for granting Government recognition to CAs. Recognized CAs would have to meet certain requirements, including, inter alia, the engagement of a professional approved by the DITS to conduct an annual audit on the provision of CA services and compliance with a code of practice issued by Government. Failure to comply with the requirements

might result in suspension or revocation of the recognition granted by Government. Through the operation of this regime, consumers would be able to assess the trust standard of individual CAs and to make an informed choice when obtaining CA services.

17. PAS/CI advised that at present, Tradelink had maintained regular contacts with Information Technology Services Department to ensure the provision of a trustworthy technical system. Regular audits had been conducted by Tradelink to ensure data security and integrity. In future, Government would lay down clear service requirements for compliance by new electronic service providers before actual appointment. The Administration would take into account the Bills Committee's view in formulating an appropriate legal framework for appointing and regulating all electronic service providers when the market was liberalized.

18. Mr SIN Chung kai also suggested to amend the Bill to include a schedule each listing the name(s) of the specified electronic service provider(s) and the specified eligible agent(s), using the approach in the Import and Export Ordinance (Cap. 60). This would enable the Legislative Council to scrutinize the appointment and revocation of the relevant service providers and agents. PAS/CI undertook to consider the member's suggestion.

*(Post meeting note : The requested information was provided vide LC Paper No. CB(1) 1495/00-01(01).)*

*Clause 3 - New section 3B - Presumption regarding information sent by recognized electronic service &*

*Clause 12 - New section 42A - Proof of contents of electronic record*

19. Members noted that new section 3B provided for aids to proof in relation to information received by the Commissioner that had been sent using a recognized electronic service and new section 42A served to facilitate the admission and proof of electronic records in court proceedings. Mr SIN Chung-kai was of the view that if the concerned provisions were consistent with the spirit of ETO which provided a statutory framework for conducting commercial and other transactions by electronic communication in Hong Kong, and gave electronic records and digital signatures used in electronic transactions the same legal status as that of their paper-based counterparts, it was not necessary to introduce a separate provision in each and every piece of related legislation for the purpose. Rather, a cross reference could be made to apply the relevant provisions in ETO to different ordinances.

20. PAS/CI advised that in drafting the present Bill, the Administration had considered the provisions in the ETO. Section 14 of ETO provided that if any other Ordinance made express provision regarding electronic records for the purposes of that Ordinance, the relevant sections of ETO would not affect that express provision.

21. Mr SIN Chung-kai reiterated that the situation was undesirable, particularly when more and more Government departments/bureaux were prepared to accept electronic records for official use. He therefore urged the Administration to

review the situation. In response, PAS/CI undertook to follow up on the issue separately with the Department of Justice.

22. Members did not raise any specific questions in respect of the remaining clauses.

### Dutiable Commodities (Amendment) Regulation 2001

23. PAS/CI enquired whether the Bills Committee could take the opportunity to scrutinize the draft Dutiable Commodities (Amendment) Regulation 2001 (the Regulation). The purpose of the Regulation was to amend the Dutiable Commodities Regulations (Cap. 109 sub. leg.) to make provision regarding the use of a particular electronic service in connection with applications for permits under the Ordinance, and for dealings in relation to permits generally. He said that the Administration intended to bring the Regulation into effect after the passage of the Bill within this legislative session.

24. ALA2 advised that while the Administration could proceed with its proposal as stated, under Section 34 of the Interpretation and General Clauses Ordinance (Cap. 1), members could amend the Regulation not later than 28 days after the sitting at which the Regulation was laid. This would mean that the Regulation could be effective during the summer but the implementation of EDI for DCP would then shortly be subject to changes if there were amendments by the Legislative Council in the next legislative session.

25. After deliberation, the Bills Committee preferred not to support the Administration's proposal.

### **III. Any Other Business**

#### The way forward

26. The Chairman concluded that the Bills Committee had essentially completed its work. Pending further information from the Administration, the Bills Committee would consider whether there was a need to convene further meeting to discuss the Bill.

*(Post meeting note : The requested information containing further CSAs from the Administration was circulated to members vide LC Paper No. CB(1) 1495/00-01(01). A Bills Committee meeting was subsequently held on 26 June 2001 to discuss the views of the industry.)*

27. There being no other business, the meeting ended at 10:45 am.

Legislative Council Secretariat

13 September 2001